IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

APPEAL NO.824 OF 1998
IN
COMPANY PETITION NO.38 OF 1998

Arpan Leasing Company Limited, a company incorporated under provisions of Companies Act, 1956, having its registered office at Room No.58, Fifth Floor, Bombay Mutual Chambers, 19/21, Ambalal Doshi Marg, (Hamam Street), Fort, Mumbai 400 023. ..Appellant. (Orig. Petitioner)

Vs.

Supreme Asphalts Private Limited, a company incorporated under the provisions of Companies Act, 1956, having its registered office at 8, Bhavani Service Industrial Estate, Opp. I. I. T. Powai, Mumbai 400 076. ..Respondent. (Orig. Respondent)

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Shri. B.R. Palav with Ms. Bhagyashree Rangari i/b S. Ashwinikumar & Co. for the Appellant.
None for the Respondent.

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CORAM: **R. M. S. KHANDEPARKAR, &**
DR. D.Y. CHANDRACHUD, JJ.

25th January, 2007.

ORAL JUDGMENT (Per DR. D.Y. CHANDRACHUD, J.) :

1. A Company Petition for an order of winding up was filed by the Appellant under Sections 433 and 434 of the Companies Act, 1956. The claim of the Appellant was based on a lease

agreement dated 1st November, 1995 which was terminated by a letter dated 1st August, 1997. The Learned Single Judge noted that in reply to the statutory notice dated 1st August, 1997 two defences have been raised by the company on 11th August, 1997. The first defence was that despite the Appellant having agreed to furnish the original documents, those documents have not been furnished to the company. The second defence was that a fax has been received from the Appellant under which an amount of Rs.3,23,700/- was confirmed as being due and payable by the Appellant to the company whereas according to the statutory notice an amount of Rs.3,23,034/- was stated to be due to the Appellant by the company. In other words, the amount due from the Appellant to the company approximated to the amount claimed to be due from the company. The Learned Single Judge noted that the Company Petition does not categorically deal with the two defences to the statutory notice. This was a vital and important aspect since Section 434 of the Companies Act, 1956 provides for an order of winding up of a company on the ground that it is unable to pay its debts. The Learned Single Judge held that there was

thus a basic lacuna in the petition and granting an opportunity at that stage to amend the petition would amount to encouraging a practice of improper drafting of company petitions.

2. On behalf of the Appellant reliance has been placed on the averments contained in paragraph 14 of the Company Petition in which it has been stated that the company has collected a copy of the signed lease agreement immediately on its execution and also received a certified true copy thereof from the bankers of the Appellant. This pleading would cover the first defence to the statutory notice. The fact, however, remains that the second defence to the statutory notice has not been dealt with in the Company Petition. The only reference to which the attention of the Court has been drawn is a statement in paragraph 14 of the Company Petition to the effect that the facts represented by the Appellant are adverted to as being “mistaken”. Such a vague pleading cannot sustain a company petition for winding up. Having regard to the serious consequences which result from the admission of a Company Petition for winding up, the Learned

Judge cannot be regarded as being in error in requiring clear and cogent pleadings in support of the claim in the Petition. That apart, counsel appearing for the Appellant has stated before the Court that the Appellant had in fact instituted a suit against the company subsequent to which a decree has also been passed. In that view of the matter, the Company Petition will not serve any useful purpose. Having regard to the aforesaid factual situation, we do not find any reason to interfere. The Appeal is dismissed.

(R. M. S. KHANDEPARKAR, J.)

(DR. D.Y. CHANDRACHUD, J.)